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10 UNITED STATES DISTRICT COURT

11 NORTHERN DISTRICT OF CALIFORNIA

12 JANICE WOOD, ANTHONY ALFARO, and
13 AARON DIETRICH on behalf of themselves
and others similarly situated,

14 Plaintiffs,

15 v.

16 MARATHON REFINING LOGISTICS
SERVICES LLC, and DOES 1 THROUGH
17 AND INCLUDING 25,

18 Defendants.

19 Case No. 4:19-cv-04287-YGR

20 **PLAINTIFFS' SECOND AMENDED
CLASS ACTION COMPLAINT**

- 21 1. Failure To Pay Reporting Time Pay
(IWC Wage Order No. 1-2001);
- 22 2. Failure To Pay All Wages Earned At
Termination (Labor Code §§ 200-203);
- 23 3. Failure To Provide Accurate Itemized
Wage Statements (Labor Code §§ 226-
226.3);
- 24 4. Violations of the Unfair Competition
Law (Bus. & Prof. Code §§ 17200 *et seq.*)
- 25 5. Liability for Civil Penalties Under the
Private Attorneys General Act,
California Labor Code §§ 2698, *et seq.*

26 **DEMAND FOR JURY TRIAL**

27 COMES NOW, PLAINTIFFS JANICE WOOD, ANTHONY ALFARO, and AARON
DIETRICH ("Plaintiffs"), on behalf of themselves and a class of all others similarly situated as
28 defined herein (the "Class"), allege on knowledge as to themselves and otherwise on information
and belief, as follows:

NATURE OF ACTION

1. This class action on behalf of operators at the refinery of Defendant Marathon

1 Refining Logistics Services LLC (“Marathon”) in Martinez, California challenges a form of wage
 2 theft—the practice of scheduling refinery operators for mandatory “standby” shifts but failing to
 3 pay required reporting time pay.

4 2. Marathon requires its operators at its refinery in Martinez, California to work
 5 regular 12-hour shifts. In addition to their regular 12-hour shifts, operators at Marathon’s
 6 Martinez refinery must regularly be available for designated 12-hour standby shifts twice a day.

7 3. Marathon requires operators at its Martinez refinery to be at the ready to receive
 8 calls during two 1.5-hour time periods when assigned to cover standby shifts, which commence 1
 9 hour prior to the start of the scheduled standby shift and end 30 minutes after the standby shift has
 10 started. If an operator cannot be reached during these 1.5-hour time periods, the operator is
 11 considered absent without leave and is subject to disciplinary action. If an operator is asked to
 12 work the scheduled standby shift during one of the 1.5-hour time periods, the operator must report
 13 for duties at the refinery in Martinez within a time period not to exceed 3.5 hours. If an operator
 14 is not contacted at all during these 1.5-hour time periods, the operator is not compensated at all by
 15 Marathon, although the operator’s activities have been significantly constrained.

16 4. Marathon requires maintenance workers at its Martinez refinery to work regular
 17 12-hour shifts. In addition to their regular 12-hour shifts, maintenance workers at Marathon’s
 18 Martinez refinery must regularly be available to fill standby shifts for one week out of every ten
 19 weeks.

20 5. Marathon requires maintenance workers at its Martinez refinery to be at the ready
 21 to receive calls at any point during the 24 hours that the maintenance worker is on the standby
 22 shift. The maintenance worker must answer the telephone call or return the telephone call within
 23 30 minutes after receiving it. The maintenance worker must arrive at the refinery “within a
 24 reasonable amount time” but generally no longer than two hours. If the maintenance worker fails
 25 to respond to the telephone call within 30 minutes or fails to arrive at the refinery within “a
 26 reasonable amount of time,” the maintenance worker is considered absent without leave and is
 27 subject to disciplinary action. If the maintenance worker is not contacted at all during the standby
 28 period, then the maintenance worker is not compensated at all by Marathon, although his or her

1 activities have been significantly constrained during the entire week that the maintenance worker
 2 remains on standby.

3 6. These standby shifts impose tremendous costs on employees. Because Marathon
 4 requires employees to be available for standby shifts, these employees cannot commit to other
 5 activities such as, for example, other jobs or classes during those scheduled standby shifts and the
 6 period that commences prior to the standby shifts during which they must be at the ready to
 7 receive a call and come into the worksite if asked. If employees have children or care for elders,
 8 they must make contingent childcare or elder care arrangements. They also cannot commit to
 9 social plans with friends or family.

10 7. In addition to their scheduled standby shifts, Marathon operators at its Martinez
 11 refinery must wait to be called 1 hour prior to the start of each of the two scheduled standby
 12 shifts. Consequently, they are inconvenienced not only for the periods of the scheduled standby
 13 shifts they must cover, but also for the 1-hour time periods before the standby shifts commence.
 14 During this 1-hour time period prior to the start of the standby shift, operators must be ready to
 15 answer calls, and they cannot do things incompatible with answering a phone call, such as
 16 sleeping, taking a class, going camping, or being at any location without cell service including,
 17 for example, elevators and numerous rural areas.

18 8. Marathon maintenance workers are inconvenienced for the entire time that they are
 19 on standby. Maintenance workers can be called into work by Marathon at any time during the
 20 week that they are on standby. Consequently, maintenance workers are under an obligation to
 21 avoid activities that are incompatible with answering a phone and traveling to the refinery on
 22 short notice.

23 9. Whether or not Marathon ultimately calls an employee on standby shifts and
 24 requires the employee to work a standby shift, the employee has still suffered inconvenience and
 25 has forgone the opportunity to take other work that could have been scheduled for the day or
 26 evening, take a class, go camping in an area with limited cell reception, and make out-of-town
 27 plans, amongst other restrictions.

28 10. In short, the requirement of having to be at the ready for standby shifts and arrive

1 at work if called significantly limits operators' and maintenance workers' ability to earn other
 2 income, take classes, care for dependent family members, and enjoy time for recreation.

3 11. Pursuant to Wage Order 1-2001, an employee is entitled to reporting time pay
 4 when he or she "is required to report for work and does report, but is not put to work or is
 5 furnished less than half said employee's usual or scheduled day's work." The amount of reporting
 6 time pay that must be paid "is half the usual or scheduled day's work, but in no event for less than
 7 two (2) hours nor more than four (4) hours, at the employee's regular rate of pay...."

8 12. Notwithstanding Marathon's standby shift policy, Marathon compensates
 9 operators and maintenance workers only when actually required to work during the standby shift.
 10 Marathon does not credit its operators and maintenance workers at its Martinez, California
 11 refinery for "reporting for work" when the employee is scheduled for a standby shift and is not
 12 told that he or she has to work during the standby shift. These practices have resulted, and
 13 continue to result, in Marathon not paying its employees required reporting time pay.

PARTIES

15 13. Plaintiff Janice Wood is a citizen of the State of California, currently residing in
 16 the County of Napa. She works as an operator at Marathon's Martinez refinery.

17 14. Plaintiff Anthony Alfaro is a citizen of the State of California, currently residing in
 18 the County of Contra Costa. He formerly worked as an operator at Marathon's Martinez refinery.

19 15. Plaintiff Aaron Dietrich is a citizen of the State of California, currently residing in
 20 the County of Contra Costa. He works as a maintenance worker at Marathon's Martinez refinery.

21 16. Marathon is a Delaware Limited Liability Company doing business in California
 22 and is a "person" as defined by California Labor Code section 18 and by California Business and
 23 Professions Code section 17201. Marathon is an "employer" as that term is used in the California
 24 Labor Code and Wage Order 1-2001. Marathon's headquarters is in Findlay, Ohio.

25 17. The true names and capacities of defendants DOES 1 through 25, inclusive,
 26 whether individual, plural, corporate, partnership, associate or otherwise, are not known to
 27 Plaintiffs, who therefore sue said defendants by such fictitious names. Plaintiffs will seek leave
 28 of Court to amend this Complaint to show the true names and capacities of defendants DOES 1

1 through 25, inclusive, when the same have been ascertained. Plaintiffs are informed and believe
 2 and thereon allege that each of the defendants designated herein as DOE is negligently, wantonly,
 3 recklessly, tortiously, and unlawfully responsible in some manner for the events and happenings
 4 herein referred to and negligently, wantonly, recklessly, tortiously, and unlawfully proximately
 5 and legally caused injuries and damages to Plaintiffs and the Class as herein alleged.

6 18. Plaintiffs are also informed and believe and thereon allege that DOES 1 to 25, at
 7 all relevant times herein, were the agents, principals, and/or alter egos of Marathon and that they
 8 are therefore liable for the acts and omissions of Marathon.

9 19. At all times pertinent hereto, each of the said DOE defendants participated in the
 10 doing of acts hereinafter alleged to have been done by Marathon and, furthermore, were the agents,
 11 servants, and/ or employees of Marathon, and at all times herein mentioned, were acting within the
 12 course and scope of said agency and employment.

13 JURISDICTION AND VENUE

14 20. This Court has subject matter jurisdiction over this putative class action under the
 15 Class Action Fairness Act of 2005. 28 U.S.C. sections 1332(d), 1453 and 1711-1715.

16 21. The venue of this action is appropriately in the United States District Court for the
 17 Northern District of California because Marathon conducts substantial business on the territory of
 18 the Northern District and the state court from which this matter was removed is located in the
 19 Northern District.

20 CALIFORNIA'S REPORTING TIME PAY REQUIREMENT

21 22. Pursuant to its authority under Labor Code section 1173, the Industrial Welfare
 22 Commission promulgated Wage Order 1-2001. Wage Order 1-2001 applies to Marathon's
 23 refinery in Martinez, California.

24 23. Wage Order 1-2001 mandates that employees be paid reporting time pay as
 25 follows: "Each workday an employee is required to report for work and does report, but is not put
 26 to work or is furnished less than half said employee's usual or scheduled day's work, the
 27 employee shall be paid for half the usual or scheduled day's work, but in no event for less than
 28 two (2) hours nor more than four (4) hours, at the employee's regular rate of pay, which shall not

1 be less than the minimum wage.”

2 24. Unpredictable work schedules take a toll on employees. Without the security of a
 3 definite work schedule, workers who must be “on-call” or on “standby” are forced to make
 4 childcare arrangements, elder-care arrangements, encounter obstacles in pursuing their education,
 5 experience adverse financial effects, and deal with stress and strain on their family life. The “on-
 6 call” or “standby” shifts also interfere with employees’ ability to obtain supplemental
 7 employment in order to ensure financial security for their families.

FACTS SPECIFIC TO PLAINTIFFS

9 25. Plaintiffs have worked and continue to work as operators or maintenance workers
 10 at Marathon’s refinery in Martinez, California. During the course of their employment, Plaintiffs
 11 were asked to cover designated standby shifts.

12 26. When assigned to cover standby, Plaintiffs Wood and Alfaro and other operators
 13 had to be at the ready to receive a call for the period one hour prior to the start of a standby shift
 14 until thirty minutes after the standby shift commenced. If Plaintiffs Wood and Alfaro and other
 15 operators received a call, they had about 3.5 hours to arrive at the refinery.

16 27. Plaintiff Aaron Dietrich and other maintenance workers on standby shifts had to be
 17 ready to receive a call at any point during the week that they were on standby. Maintenance
 18 workers then had 30 minutes to respond to the call and about 2 hours to arrive at the refinery.

19 28. Marathon considered Plaintiffs and the other operators and maintenance workers at
 20 its Martinez refinery as absent without leave and subjected them to discipline if they failed to
 21 answer a call during the designated time period. During their employment with Marathon,
 22 Plaintiffs have frequently been scheduled to cover standby shifts, which always involved
 23 scheduled start times and set scheduled ending times.

24 29. Unless Plaintiffs or other operators and maintenance workers were asked to work a
 25 standby shift, Marathon did not provide them with any compensation, including reporting time
 26 pay.

CLASS ALLEGATIONS

27 30. Plaintiffs bring this action on behalf of themselves and the following ascertainable

1 class of similarly situated persons: All operators and maintenance workers employed at the
 2 refinery of Marathon USA, Inc. in Martinez, California at any time from four years prior to the
 3 filing of this complaint up to and continuing until the time that judgment is entered in this case
 4 (the “Class”).

5 31. This class action is brought pursuant to Federal Rule of Civil Procedure 23.
 6 Plaintiffs reserve the right to modify the description of the Class and to later designate subclasses
 7 based on the results of discovery or otherwise.

8 32. **Numerosity:** The Class is so numerous that the individual joinder of all members
 9 is impractical under the circumstances of this case. While the exact number and identities of the
 10 members of the Class are presently unknown, there are at least more than 100 members of the
 11 Class.

12 33. **Ascertainability:** The identities of the members of the Class are readily
 13 ascertainable by review of Marathon’s records, including, but not limited to, payroll records,
 14 timekeeping records, schedules, and other documents and other business records that Marathon is
 15 required by law to maintain.

16 34. **Commonality/Predominance:** There are predominant common questions of law
 17 and fact and a coherent community of interest amongst Plaintiffs and the claims of the Class,
 18 concerning Marathon’s treatment of them, including but not limited to:

- 19 a. Whether the reporting time pay requirement that an employee “report for
 work” requires that Plaintiffs and the Class physically report for work.
- 20 b. Whether Marathon’s requirements that its operators and maintenance
 workers (1) be at the ready to receive a call during a designated standby
 period and (2) arrive at work if asked to work a standby shift or face
 discipline triggers California’s reporting time pay obligations.
- 21 c. Whether Marathon’s requirements that its operators and maintenance
 workers (1) be at the ready to receive a call during a designated standby
 period (2) arrive at work if asked to work the standby shift and (3) be
 subject to discipline if they fail to satisfy either requirement violates

California policy as expressed by the state legislature's enactment of Labor Code sec. 96(k) prohibiting discipline for employees engaging in lawful off-duty conduct.

- d. Whether Marathon violated and continues to violate Wage Order 1-2001.
 - e. Whether Marathon violated Labor Code sections 200-203.
 - f. Whether Marathon violated Labor Code sections 226, 226.3.
 - g. Whether Marathon violated Cal. Bus & Professions Code section 17200.

8 35. **Typicality:** Plaintiffs' claims are typical of the claims of the Class in that Plaintiffs
9 and the Class sustained damages arising out of the same policies, procedures, and/or business
10 practices of Marathon.

11 36. **Adequacy of Representation:** Plaintiffs will fairly and adequately protect the
12 interests of the Class. Plaintiffs have retained counsel who has substantial experience in
13 prosecuting complex wage and hour class action claims.

14 37. **Superiority:** A class action is superior to other available means for the fair and
15 efficient adjudication of this controversy, since the individual joinder of all members of the Class
16 is impracticable. A class action will permit a large number of similarly situated persons to
17 prosecute their common claims in a single forum simultaneously, efficiently and without the
18 unnecessary duplication of effort and expense that numerous individual actions would engender.
19 Furthermore, as the damage suffered by each individual of the Class may be small, on a relative
20 basis, the expenses and burden of individual litigation would make it difficult or impossible for
21 individual members of the class to redress the wrongs done to them. Moreover, an important
22 public benefit will be realized by addressing the matter as a class action. The cost to the court
23 system of adjudication of such individual litigation would be substantial. Individual litigation
24 would also present the potential for inconsistent or contradictory judgments. Adjudication of
25 individual Class members' claims with respect to Marathon would, as a practical matter, be
26 dispositive of the interest of other members or substantially impair or impede the ability of other
27 individual members of the Class to protect their interests.

38. Plaintiffs are unaware of any difficulties that are likely to be encountered in the

management of this action that would preclude its maintenance as a class proceeding;

ALLEGATIONS REGARDING COLLECTIVELY BARGAINED AGREEMENTS BETWEEN MARATHON AND PLAINTIFFS' UNION

4 39. During the time period covering Marathon’s liability for violations described in
5 this complaint, Plaintiffs’ relationship with Marathon has been governed by collectively
6 bargained agreements between Marathon and United Steel Workers A.F.L.-C.I.O. Local 5
7 (“USW”). There are two relevant collectively bargained agreements: (1) “Articles of Agreement
8 Between Tesoro Refining Company Martinez Refinery and United Steelworkers International
9 Union Local 5 and United Steelworkers International Union, February 1, 2015,” which was later
10 modified by a 2019 settlement agreement (attached as Exhibit A); and (1) “Articles of Agreement
11 Between Tesoro Refining Company Martinez Chemical Plant and United Steelworkers
12 International Union Local 5, effective March 1, 2015,” which was later modified by a 2019
13 settlement agreement (attached as Exhibit B). Recently, another court found that there is no need
14 to interpret a substantially similar collective bargaining agreement between Chevron and its
15 refinery operators’ union to resolve claims that are identical to the claims raised in this complaint.
16 Order Remanding Action, *Bradford v. Chevron USA Inc.* (“Chevron”), United States District
17 Court for the Northern District of California Case Number 19-cv-04051-PJH, Docket Number 32
18 (“Order Remanding Action”). The court’s reasoning in the Order Remanding Action in *Chevron*
19 is instructive in the present matter.

20 40. There are several provisions in the two attached CBAs that refer to Marathon's
21 unlawful policy of not paying reporting time pay to its employees for the time they spend being
22 ready to answer their telephones during mandatory standby shifts. While these provisions
23 describe the illegal mandatory standby shift policy that is at issue in this complaint, the resolution
24 of the claims raised in the complaint is not substantially dependent on analysis or interpretation of
25 any CBA provision. Consequently, the claims raised in this complaint are not preempted by
26 section 301 of the Labor Management Relations Act.

27 41. Marathon's standby shift policy allows for alterations to the standby procedures
28 based on a mutual agreement between employees and management:

1 Employees assigned to a particular “grouping of units” will be given the
 2 latitude to formalize, in writing, a mandatory standby system that is
 3 different from the one listed below. By doing this, we provide maximum
 4 flexibility for Operators to voluntarily fill standby assignments in
 5 whatever way is most attractive to the individual crews. The procedure
 6 used must be: (a) agreed to by a majority of the employees assigned to the
 7 ‘grouping of units’ and (b) be approved by the appropriate Area
 8 Superintendent.

9
 10 Exhibit B at 49. However, Plaintiffs are unaware of any agreed upon written policy that is
 11 different from the one described in the CBAs. Consequently, Plaintiffs’ allegation that
 12 Marathon’s mandatory standby shift policy violates California law refers to the policy explicitly
 13 provided for in the CBAs.

14 42. The policy in the CBAs calls for “mandatory standby” shifts, which consist of a
 15 “number[] of employees per crew that will be required to standby to cover overtime needs.”
 16 Exhibit B at 49. The primary issue raised in the complaint is whether Marathon’s mandatory
 17 standby policy violates Wage Order 1-2001’s directive that employers pay their employees
 18 reporting time pay. To resolve this issue, the Court must determine whether Marathon’s
 19 mandatory standby policy “tether[s] [its employees] by time and policy to particular locations or
 20 communications devices” and whether Marathon’s policy “imposes significant limitations on how
 21 employees can use their time” *Ward v. Tilly’s Inc.*, 31 Cal.App.5th 1167, 1187 (2019). If
 22 the answers to these questions are affirmative, then Marathon’s policy triggers the obligation to
 23 pay reporting time pay to its employees, and Marathon’s failure to do so violates Wage Order 1-
 24 2001. If, on the other hand, the answers to these questions are negative, then Marathon is not
 25 required to pay reporting time pay to its employees and is not in violation of Wage Order 1-2001.

26 43. This Court noted that, based on the allegations in the original complaint, it could
 27 not determine whether it would have to interpret the CBAs “to determine the extent of the alleged
 28 constraints on plaintiffs’ time during standby shifts” *Wood v. Marathon Refining Logistics*
Service LLC, United States District Court for the Northern District of California, Case Number
 19-cv-04287-YGR, Docket Number (“Doc.”) 24 at 6. The Court noted that it might “have to
 analyze terms pursuant to which standby employees may ‘trade or otherwise exchange standby
 assignments,’ may notify [Marathon] if they are ‘otherwise unavailable when on standby,’ and

1 must reach the refinery ‘within a reasonable time’ after receiving a call.” *Id.*

2 44. There is no need to interpret the provision that states that an employee on “standby
 3 may trade or otherwise exchange standby assignments . . .” Exhibit B at 49. This provision has
 4 no impact on the “constraints on plaintiffs’ time during standby shifts” because the sentence
 5 following this provision reads: “However, it will be the sole responsibility of each designated
 6 standby to make arrangements, at least 24-hours in advance.” *Id.* As such, employees are not
 7 free to exchange standby assignments *during* standby shifts—only 24 hours before the standby
 8 shift. Consequently, the provision permitting employees to “exchange standby assignments” does
 9 not lessen or otherwise affect the tethers or constraints on employees’ time during the standby
 10 shift. Tethers and constraints on employees’ time during the standby shift are the only tethers and
 11 constraints relevant to the Court’s analysis of whether standby shifts trigger reporting time pay.
 12 As the court in Chevron observed, “[a] CBA does not preempt claims under California labor laws
 13 simply because it contains ambiguous terms. Something more is required—resolution of the
 14 state-law claim must depend upon analysis of such a term.” Order Remanding Action at 14.
 15 Here, even if the CBA term regarding “exchang[ing] standby assignments” were somehow
 16 ambiguous, the resolution of the state-law claim does not depend on analysis of this term because
 17 the term does not affect time restrictions *during* standby shifts. Thus, no interpretation of the
 18 provision regarding “exchang[ing] standby assignments” is necessary to resolve the claims raised
 19 in this complaint.

20 45. There is no need to interpret the provision that states that an employee must notify
 21 Marathon if they are “otherwise unavailable when on standby.” Exhibit B at 50. The full
 22 provision reads: “Employees, who become sick, injured, or otherwise unavailable when on
 23 standby, must notify Security Control as far in advance as possible that they are not available for
 24 designated shift(s).” *Id.* This provision has no impact on “the extent of the alleged constraints on
 25 plaintiffs’ time . . .” Doc. 24 at 6. Rather, the provision simply states that an employee is
 26 required to notify management of any unexpected unavailability to cover a standby shift as soon
 27 as possible. The provision does not address the tethers or time constraints placed on the
 28 employee during his or her standby shift. Any need to interpret this provision is tenuous and

1 hypothetical at best because the provision does not indicate that an employee has any more
 2 latitude to miss his or her standby shift than any other shift. A tenuous or “hypothetical
 3 connection between the claim and the terms of the CBA is not enough to preempt the claim”
 4 *Cramer v. Consol. Freightways, Inc.*, 255 F.3d 683, 691-692 (9th Cir. 2001). Here, the provision
 5 does not have an apparent impact on the “the extent of the alleged constraints on plaintiffs’ time.”
 6 Thus, no interpretation of the provision regarding being “otherwise unavailable” is necessary to
 7 resolve the claims raised in the complaint.

8 46. There is also no need to interpret the provision that states that, after being
 9 contacted by Marathon, an employee must report to the plant “within a reasonable time.” Exhibit
 10 B at 49-50. The entire provision reads: “An employee on standby must be able to reach the plant
 11 within a reasonable time, but in no case longer than 3.5 hours after having been contacted to
 12 report to work.” *Id.* The provision establishes an unambiguous maximum time that an employee
 13 has to reach the plant after being called. The Court may analyze the constraints on an employee’s
 14 time based on this maximum amount of time. Moreover, Plaintiffs’ theory of the case alleges that
 15 the reporting time pay requirement is triggered by Plaintiffs’ are sufficient to “tether[]
 16 [employees] by time and policy to particular locations or communications devices” *Ward*,
 17 31 Cal.App.5th at 1187. Plaintiffs allege that this “tether” is sufficient to trigger reporting time
 18 pay. Consequently, the amount of time that an employee has to reach the plant is not dispositive
 19 of whether the claim has merit. Thus, no interpretation of the provision regarding “reasonable
 20 time” is necessary to resolve Plaintiffs’ claims.

21 47. The court in *Chevron* addressed a substantially identical CBA provision and found
 22 that no interpretation was necessary. Order Remanding Action at 13-14. The provision at issue
 23 in *Chevron* required operators to “be able to get to work in a reasonable time period after being
 24 contacted” *Id.* at 13. The court found that “Plaintiffs’ claim, relying on *Ward*, is that they
 25 were required to report to work and actually reported to work by being available and personally
 26 contactable during specific on-call periods, and after reporting they were not put to work. The
 27 merits of that claim do not depend on how much time might have passed between the employee
 28 reporting to work and his physical arrival at the workplace. Plaintiffs’ claim is that the Operators

1 report to work by being reachable at fixed times, which California law can evaluate without any
 2 dependence on the requirement that standby Operators ‘be able to get to work in a reasonable
 3 period of time after being contacted.’” *Id.* at 13-14. As noted, here, the merits of Plaintiffs’
 4 reporting time claim likewise do not depend on how much time might have passed between the
 5 employee reporting to work and his or her physical arrival at the workplace. Rather, as in the
 6 *Chevron* case, Plaintiffs’ claim that they “report for work” when they are required to be reachable
 7 at fixed times, thereby triggering the reporting time pay requirement. Thus, similarly, here, no
 8 interpretation of the provision regarding “reasonable time” is necessary to resolve the claims
 9 raised in the complaint.

10 48. This Court further noted that “given that the complaint alleges that employees
 11 ‘must regularly be available’ to fill standby shifts, the Court would have to interpret provisions of
 12 the CBAs and guidelines that, for example, provide employees with ‘the opportunity to remove
 13 themselves from the Voluntary Overtime List.’” Doc. 24 at 6. However, the provisions regarding
 14 the Voluntary Overtime List are unrelated to mandatory standby shifts. Voluntary Overtime Lists
 15 were used to fill necessary overtime positions before the person on mandatory standby was called.
 16 However, despite the roster of the overtime list, an employee on mandatory standby still has to be
 17 available to answer the telephone in case the Volunteer Overtime List was insufficient to cover
 18 Marathon’s needs, which often happened. As such, employees on mandatory standby would have
 19 to remain tethered to their telephone and a location with cell phone service despite the roster of
 20 the Voluntary Overtime List. Consequently, the ability to remove oneself from the Voluntary
 21 Overtime List did not change the conditions for those employees assigned to mandatory standby
 22 shifts. Plaintiffs’ allege that Marathon has violated its obligation to pay reporting time pay
 23 regardless of the roster of the Voluntary Overtime List or the procedures for filling the Voluntary
 24 Overtime List. Thus, no interpretation of the provision regarding employees’ “opportunity to
 25 remove themselves from the Voluntary Overtime List” is necessary to resolve the claims raised in
 26 the complaint.

27 ///

28 ///

1 **FIRST CAUSE OF ACTION**
 2 **FOR FAILURE TO PAY REPORTING TIME PAY**
 3 **(IWC Wage Order No. 1-2001)**
 4 **(By Plaintiffs on Behalf of Themselves and the Class Against Marathon**
 5 **and DOES 1 Through 25)**

6 49. Plaintiffs, on behalf of themselves and the Class, hereby incorporate by reference
 7 the preceding paragraphs of this complaint as though set forth in full at this point.

8 50. Wage Order 1-2001 provides that “[e]ach workday an employee is required to
 9 report for work and does report, but is not put to, work or is furnished less than half said
 10 employee’s usual or scheduled day’s work, the employee shall be paid for half the usual or
 11 scheduled day’s work, but in no event for less than two (2) hours nor more than four (4) hours, at
 12 the employee’s regular rate of pay, which shall not be less than the minimum wage.”

13 51. As set forth herein, Marathon scheduled Plaintiffs and the Class for standby shifts
 14 that required them to be at the ready to receive a call and face discipline if they did not answer
 15 such call. Marathon also required Plaintiffs and the Class to arrive at work within a designated
 16 time period if asked to work the scheduled standby shift. Failure to answer a call or arrive at
 17 work within the time frame subjected Plaintiffs and the Class to discipline.

18 52. Marathon has failed to pay required reporting time pay to Plaintiff and the Class,
 19 as Plaintiff and the Class were not paid reporting time pay or any compensation for having to be
 20 at the ready to work a standby shift. Marathon compensated only operators asked to come to
 21 work and work the standby shift.

22 53. As a direct and proximate result of Marathon’s actions as set forth herein,
 23 Plaintiffs and the Class have been damaged in that Plaintiffs and the Class have not been paid all
 24 required reporting time pay.

25 **SECOND CAUSE OF ACTION**
 26 **FAILURE TO PAY ALL WAGES EARNED AT TERMINATION**
 27 **(Labor Code § 200 - 203)**
 28 **(By Plaintiff Anthony Alfaro on Behalf of Himself and the Class Against Marathon**
 29 **and DOES 1 Through 25)**

30 54. Plaintiffs hereby incorporate all prior paragraphs as if fully set forth herein.

31 55. Labor Code sections 201 and 202 require that Marathon pay their employees all
 32 wages due within 24 hours after a discharge or 72 hours after a resignation from employment, if

1 the employee has given less than 72 hours' notice. Labor Code section 203 provides that if an
 2 employer willfully fails to timely pay such wages the employer must, as a penalty, continue to
 3 pay the employee's daily wage until the back wages are paid in full or an action is commenced.
 4 The penalty cannot exceed 30 days of wages.

5 56. Members of the Class who have separated from Marathon's employment were not
 6 paid required reporting time pay within 24 hours after a discharge, or 72 hours after a resignation,
 7 as applicable.

8 57. Marathon's failure to pay required reporting time pay upon termination was
 9 willful.

10 58. As a direct and proximate result of Marathon's willful conduct in not paying
 11 members of the Class all earned wages at the time their employment with Marathon ended, each
 12 member of the Class whose employment with Marathon ended is entitled to 30 days' wages as a
 13 penalty under Labor Code section 203.

14 **THIRD CAUSE OF ACTION**
 15 **FOR FAILURE TO PROVIDE ACCURATE WAGE STATEMENTS**
 16 **(Labor Code §§ 226, 226.3)**
 17 **(By Plaintiffs and the Class Against Marathon and DOES 1 Through 25)**

18 59. Plaintiffs, on behalf of themselves and the Class, hereby incorporate by reference
 19 all prior paragraphs as if fully set forth herein.

20 60. Pursuant to the Labor Code and the applicable Wage Order, employers must
 21 provide accurate itemized wage statements at the time employees are paid, showing accurate
 22 information for such things as total hours worked, gross wages earned, net wages earned,
 23 applicable hourly rates for the pay period at issue, etc.

24 61. Plaintiffs and the Class were not provided with accurate itemized wage statements,
 25 as required by law. The wage statements provided did not accurately include correct numbers for
 26 total hours worked, gross wages earned, net wages earned, applicable hourly rates for the pay
 27 period at issue, and other information required by law. Reporting time pay was not accurately
 28 reported on the wage statements.

62. Plaintiffs and the Class could not easily and promptly determine from their wage

statements that they had been properly paid. Reporting time pay was not accurately reported or calculated, such that no calculations could be performed to derive the accurate times, rates, and pay that should have been part of their compensation. The information to make such determinations could not be readily ascertained by the wage statement, standing alone, or without reference to other documents or information.

63. As a result of Marathon's failure to provide accurate itemized wage statements as required by law, Plaintiffs and the Class have been injured in the manner set forth in the Labor Code.

64. Plaintiff and the Class are entitled to the penalties set forth at Labor Code section 226(e) and/or 226.3 and/or the applicable wage order, to injunctive relief to ensure compliance with the law, to costs of suit, and reasonable attorneys' fees.

FOURTH CAUSE OF ACTION
UNFAIR BUSINESS PRACTICES
(Bus. & Prof. Code §§ 17200 *et seq.*)
(Against Marathon and DOES 1 Through 25)

65. Plaintiffs hereby incorporate by reference all prior paragraphs as if fully set forth herein.

66. Section 17200 of the California Business and Professions Code prohibits any unlawful, unfair, or fraudulent business act or practice.

67. The actions of Marathon, as herein alleged, amount to conduct which is unlawful and a violation of law. As such, said conduct constitutes an unlawful business practice, in violation of Bus. & Prof. Code sections 17200 *et seq.*

68. The actions of Marathon, as herein alleged, offend established public policy and constitute an unfair business practice. This injury is not outweighed by any countervailing benefits to consumers or competition.

69. Marathon's conduct as herein alleged has damaged Plaintiffs and other operators by denying them wages earned, due and payable. Plaintiffs and other operators have thus suffered injury in fact and loss of money. Under section 17200 Plaintiffs seek restitution of all monies not paid to them and other operators at Marathon's Martinez, California by Defendants.

FIFTH CAUSE OF ACTION

**Liability for Civil Penalties Under the Private Attorneys General Act,
California Labor Code §§ 2698, et seq.**

3 70. Plaintiffs re-allege and incorporate the foregoing paragraphs as though fully set
4 forth herein.

5 71. California Labor Code § 2699 gives any aggrieved employee the right to file an
6 action for civil penalties on behalf of themselves and other current or former employees, for the
7 employer's violations of the Labor Code.

8 72. It is in the public interest that civil penalties for violations of the Labor Code be
9 assessed and collected by aggrieved employees acting as private attorneys general.

10 73. Marathon's denial of reporting time pay, failure to compensate employees in a
11 timely fashion, and provide accurate wage statements constitutes a violation of Industrial Welfare
12 Commission Wage Order 1-2001 and California Labor Code §§ 201, 202, 203, 204 and 226.3-
13 226.7.

14 74. On July 5, 2019, Plaintiffs filed a written notice online and with service to
15 Marathon via certified mail, of Plaintiffs' intent to seek PAGA penalties pursuant to the
16 aforementioned Labor Code violations, to the Labor and Workforce Development Agency
17 ("LWDA"). The facts and legal theories supporting the causes of action giving rise to the PAGA
18 claims are the same as pled above.

19 75. The LWDA has not issued notice of its intention to pursue civil penalties or
20 investigate Plaintiffs' claims. More than 65 days have passed since the postmark date of
21 Plaintiffs' July 5, 2019 notice. Accordingly, Plaintiffs commence this PAGA claim for civil
22 remedies as provided for under Labor Code § 2699.

PRAYER FOR RELIEF

24 WHEREFORE, Plaintiffs, on behalf of themselves, and on behalf of the members of the
25 Class, pray for judgment against Marathon as follows:

26 A. For an order certifying the proposed Class;

27 B. For the attorneys appearing on the above caption to be named class counsel and for
28 Plaintiffs to be appointed class representatives;

- 1 C. For compensatory damages in an amount according to proof with interest thereon;
- 2 D. For economic and/or special damages in an amount according to proof with
interest thereon;
- 3 E. For payment of unpaid wages in accordance with California labor and employment
law;
- 4 F. For payment of penalties in accordance with California law, including but not
limited to any penalties under the Private Attorney General Act California Labor
Code §§ 2698, *et seq.*;
- 5 G. For Marathon to be found to have engaged in unfair and/or unlawful competition
in violation of Bus. & Prof. Code sections 17200, *et seq.*;
- 6 H. For Marathon to be ordered and enjoined to make restitution to Plaintiffs and the
Class, including restitutionary disgorgement, pursuant to Business and Professions
Code sections 17200 *et seq.*;
- 7 I. For interest, attorneys' fees, and costs of suit under Labor Code sections 226 and
1194 and Code of Civil Procedure section 1021.5 and other applicable code
sections; and
- 8 J. For all such other and further relief that the Court may deem just and proper.

18 Dated: January 24, 2020

WEINBERG, ROGER & ROSENFELD
A Professional Corporation

20 By: /s/ Alexander S. Nazarov
21 JANNAH V. MANANSALA
ALEXANDER S. NAZAROV

22 Attorneys for Plaintiffs JANICE WOOD,
23 ANTHONY ALFARO, and AARON DIETRICH

DEMAND FOR JURY TRIAL

Plaintiffs hereby demand a trial by jury.

Dated: January 24, 2020

**WEINBERG, ROGER & ROSENFELD
A Professional Corporation**

By: /s/ Alexander S. Nazarov
JANNAH V. MANANSALA
ALEXANDER NAZAROV

Attorneys for Plaintiffs JANICE WOOD,
ANTHONY ALFARO, and AARON DIETRICH

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1 **CERTIFICATE OF SERVICE**
2

3 I am a citizen of the United States and an employee in the County of Alameda, State of
4 California. I am over the age of eighteen years and not a party to the within action; my business
5 address is 1001 Marina Village Parkway, Suite 200, Alameda, California 94501.

6 I hereby certify that on January 24, 2020, I electronically filed the forgoing:

7 **PLAINTIFFS' SECOND AMENDED CLASS ACTION COMPLAINT**
8 with the U.S. District Court of California, Northern District (Oakland), by using the Court's
9 CM/ECF system.

10 I certify under penalty of perjury that the above is true and correct. Executed at Alameda,
11 California, on January 24, 2020.

12 I certify that all participants in the case are registered CM/ECF users and that service will
13 be accomplished by the Notice of Electronic Filing by CM/ECF system.

14
15 _____
16 */s/ Maria D. Aranda*
17 _____
18 MARIA D. ARANDA
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